

The following are extracts from the Official Secrets Act:

(Para 3) "Penalties for spying"

(1) If any person for any purpose prejudicial to the safety and interest of the state

(a) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy, or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information, which is calculated to be or might be or is intended to be, directly or indirectly useful to an enemy;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or airforce establishment or station, mine, mine-field, factory, dockyard, camp ship or air craft or otherwise in relation to naval, military or air force of the Government of India or in relation to any secret official code, to fourteen years and in other cases to three years.

"(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the state, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the state; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place,, or relating to any thing in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the state, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected recorded, published or communicated for a purpose prejudicial to the safety or interests of the state.

~~SECRET~~
~~SECRET~~

(Para 4) "Communications with foreign agents to be evidence of commission of certain offences."—(1) In any proceedings against a person for an offence under section 3 the fact that he has been in communication with, or attempted to communicate with a foreign agent, whether within or without India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the state, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision.—

(a) a person may be presumed to have been in communication with a foreign agent, if—

(i) he has, either within or without India, visited the address of a foreign agent, or consortred or associated with a foreign agent, or

(ii) either within or without India, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;

(b) the expression "foreign agent" includes any person who or who has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without India, prejudicial to the safety or interests of the state, or who has or is reasonably suspecting of having, either within or without India, committed, or attempted to commit, such an act in the interest of a foreign power;

(c) any address, whether within or without India, in respect of which it appears that there are reasonable grounds, for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

(Para 5) "Wrongful communication, etc., of information."—(1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act

or which has been/

Section 5(1) of the Official Secrets Act, 1933, makes it an offence for any person who holds or has held office under the Government of India, or as a person who holds or has held a contract made on behalf of the Government, or as a person who is or has been employed under a person who holds or has held such an office or contract—

- (a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interest of the State, his duty to communicate it; or
- (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the state; or
- (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or
- (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or informations.

he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of offense under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.

Author's footnote—Words "official secret" have reference to the secrets of a department of the Govt or the state and not to any secret of a private office. Section 5(1) applies to Government servants as well as to persons who have obtained that secret in contravention of the Act.
47 Cr. L.J. 744-225 I.C. 565, A.I.R. 1946 Bom. 322.

for any purpose prejudicial to the safety of the State--

- (a) uses or wears, without lawful authority, any naval, military, airforce, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
- (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
- (c) forges, alters, or tampers with any passport or any naval, military, airforce, police, or official pass, permit, certificate, license, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official documents; or
- (d) personates, or falsely represents himself to be, a person holding or in the employment of a person holding office under the Government of India, or to be or not to be person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or
- (e) uses or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military or airforce authority appointed by or acting under the authority of the Government of India, or any die, seal or stamp, so nearly resembling such die, seal or stamp, as to be calculated to deceive or counterfeit any such die, seal or stamp or knowingly uses or has in his possession or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State--

- (a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(Parts 6) "Unauthorized use of uniforms, falsification of reports, forgery, impersonation, and false documents.— (1) If any person for the purpose of obtaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(a) uses or wears, without lawful authority, any naval, military, airforce, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, airforce, police, or official pass, permit, certificate, license, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official documents; or

(d) personates, or falsely represents himself to be, a person holding or in the employment of a person holding office under the Government of India, or to be or not to be person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military or airforce authority appointed by or acting under the authority of the Government of India, or any die, seal or stamp, so nearly resembling such die, seal or stamp, as to be calculated to deceive or counterfeit any such die, seal or stamp or knowingly uses or has in his possession or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

MISSING PAGE

-5-

~~ORIGINAL~~ DOCUMENT MISSING PAGE(S):

~~SECRET~~

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine or with both.

(Para 9) "Attempts incitement, etc."—Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

(Para 10) "Penalty for harbouring spies."—(1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under Section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such person as aforesaid, to give on demand to a Superintendent of Police or other police-officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

(Para 11) "Search warrants."—(1) If a Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act, has been or is about to be committed he may grant a search warrant authorising any police officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence, under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand given to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

~~SECRET~~

any such offence may be laid before any Additional or Sub-Divisional Magistrate in his district, and outside such town to the District or Sub-Divisional Magistrate.

(Para 12) "Power to arrest."--- Notwithstanding anything in the Code of Criminal procedure, 1898---

(a) an offence punishable under section 3 or under section 3 read with section 9 with imprisonment for a term which may extend to fourteen years shall be cognizable and non-bailable offence; and

(b) an offence under clause (a) of sub-section (1) of section 6 shall be a cognizable and bailable offence; and

(c) every other offence under this Act shall be non-cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance.

(Para 14) "Exclusion of public from proceedings."---(1) In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person, under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the state, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(Para 15) "Offences by companies, etc."---Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence."

- 7 -

BEST COPY

~~SECRET~~